

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19648
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On August 31, 2006, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers) proposing additional income tax and interest for the taxable years 2003 and 2004 in the total amount of \$3,558.

On September 6, 2006, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers stated they would attend a hearing if the Tax Commission provides them with traveling expenses. However, since the Tax Commission does not provide travel expenses to taxpayers, the taxpayers provided additional written information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers timely filed their 2003 resident Idaho individual income tax return. However, the income reported to Idaho was not the same as the income reported to the Internal Revenue Service (IRS). The Income Tax Audit Bureau (Bureau) sent the taxpayers a letter asking them why there was a difference in the income amounts reported to the IRS and to Idaho. The taxpayers responded that the income was related to their earnings while they lived in another state. The Bureau reviewed the available information and determined the income was a distribution from an employer sponsored plan. The Bureau also determined the taxpayers received the distribution while they were residents of Idaho. The Bureau corrected the

taxpayers' return to include the income. The Bureau looked at the taxpayers' return for 2004 and determined the taxpayers excluded the same type of income on that return. The Bureau corrected the taxpayers' 2004 return and sent the taxpayers a Notice of Deficiency Determination for both 2003 and 2004.

The taxpayers protested the Bureau's determination. They stated the income the Bureau included as Idaho income was wages [Redacted] earned while working [Redacted] from January 1987 to April 2000. The money was reported and declared to the State of [Redacted] and the federal government. They stated the wages were invested [Redacted]. The wages were not earned in 2003 or 2004. The taxpayers stated that Idaho had nothing to do with their wages; therefore, they do not owe Idaho any tax.

The Bureau acknowledged the taxpayers' protest and further explained its position that the taxpayers were Idaho residents and, as such, if they received a distribution from a retirement plan, the income was taxable by Idaho. The taxpayers responded that Idaho is trying to tax them on wages earned [Redacted] when they resided in [Redacted]. They stated this money was placed in a savings account [Redacted]. It was their money, not retirement money. It was a voluntary investment account that was accountable to the State of [Redacted] and all taxes were paid at that time.

The Bureau referred the matter for administrative review. The Tax Commission sent the taxpayers a letter giving them two options for having the Notice of Deficiency Determination redetermined. The taxpayers responded that they would gladly attend a Tax Commission hearing if the Tax Commission would send them traveling expense money. They stated they would consider the Bureau's position if the Tax Commission would send them the agreement they signed that deferred any taxes to Idaho. The taxpayers stated the only deferment was with the

federal government; not the State of [Redacted], not Social Security, and definitely not Idaho. The taxpayers stated if Idaho can show that the income was earned in Idaho, they would take that into consideration.

Additional correspondence was sent to the taxpayers attempting to explain deferred compensation and how it is taxed by the states. Nevertheless, the taxpayers continued to argue that the income was not earned in Idaho, that the account was like a savings account, and the only agreement for taxes was with the federal government. The taxpayers provided a copy of [Redacted] W-2 wage statement for 2001 to show what income Idaho was attempting to tax. They stated the income was earned in [Redacted] and there was no reference to Idaho on any document. Idaho had nothing to do with their investment plan.

Idaho Code section 63-3002 states it is the intent of the Idaho Legislature to impose a tax on the residents of this state measured by their income from whatever source derived. During 2003 and 2004, the taxpayers were residents of Idaho. This is evidenced by the resident form income tax returns they filed for those years. The taxpayers have also not contested this fact. Therefore, according to Idaho Code section 63-3002, the taxpayers should have reported all their income for those years to Idaho. However, the returns the taxpayers filed with Idaho did not agree with the returns the taxpayers filed with the IRS. The taxpayers reported more income to the IRS than to Idaho.

The taxpayers do not contest that the income reported to the IRS included a disbursement from a voluntary investment plan that was purposefully not included on their Idaho returns. This income, the taxpayers stated, has no relationship or bearing to any income that was earned in Idaho or should be reported to Idaho.

From the 2001 W-2 wage statement that the taxpayers provided, it is clear that the income in question was part of a deferred compensation plan established [Redacted] for its employees. Deferred compensation is literally compensation that is deferred from taxation until a later time. Deferred compensation plans used to be supplemental to retirement or pension plans; however, they are now becoming more widely used as retirement plans. In deferred compensation plans, a certain percentage, determined by the plan participant, is subtracted from the participant's earnings and placed in an account to be drawn upon when the individual retires from the work force. This deferral of income is allowed at the federal level and in most if not all states. The consequence of the income deferral plan is that the individual must report any withdrawal as income in the year of withdrawal.

In this case, [Redacted] worked, lived, and participated in [Redacted] voluntary investment plan in [Redacted] State. When the taxpayers reported their income during the years of contribution to the plan, they reported [Redacted] wages less the amount contributed into the plan. That is to say the taxpayers reported the reduced wages on their federal income tax return and nothing to [Redacted], since [Redacted] does not have an income tax. When the taxpayers retired and moved to Idaho, they began withdrawing money from their account. Since the taxpayers' contributions were not included in taxable income in the years of contribution, the amounts withdrawn were income to them in the year withdrawn and in the state they were residing regardless of the state where the contributions were actually earned.

This case is not significantly different from the case the Idaho Supreme Court decided in Idaho State Tax Commission v. Stang, 25 Idaho P. 3d 113 (2001). In Stang, the taxpayers moved to Idaho and withdrew \$8,000 from their IRA's. They reported the distributions on both their Idaho and federal income tax returns. However, on their Idaho return, the Stangs took a

deduction of \$8,000 explaining the deduction as IRA contributions that took place while they were residents and employees in [Redacted], and had nothing to do with Idaho. In its decision, the court stated:

The first issue is whether the distribution of the \$8,000 from the IRA's constituted taxable income under the Idaho Income Tax Code. "Taxable income" is defined as "federal taxable income as determined under the Internal Revenue Code." I.C. § 63-3011B. The Stangs admit that the \$8,000 distributed from their IRA's in 1995 was taxable income under the Internal Revenue Code and that they included such sum as taxable income in their 1995 federal income tax return. "Idaho taxable income" is defined as "taxable income as modified pursuant to the Idaho adjustments specifically provided in this chapter." I.C. § 63-3011C. The Stang's admit that no provision of the Idaho Income Tax Code specifically provides that the \$8,000 can be deducted or exempted from Idaho taxable income. Therefore, the \$8,000 distribution is "Idaho taxable income" under the Idaho Income Tax Code.

Likewise, in the case at hand, the taxpayers received a distribution from their deferred compensation plan that was included in federal taxable income as determined under the Internal Revenue Code. The taxpayers did not include the distribution on their resident Idaho income tax returns. There is no provision in the Idaho Code that specifically provides for a deduction of deferred compensation whether earned in Idaho or in another state. Therefore, the deferred compensation distributions are considered Idaho taxable income in the Idaho Income Tax Code.

The taxpayers argued that the [Redacted] voluntary investment plan is the same as a personal savings account. This is not entirely true. The difference between a personal savings account and the voluntary investment plan is that all taxes have been paid on the amounts contributed to the personal savings account. The taxpayers argued that all state, social security, and medicare taxes were paid on this income; the only tax deferred was federal income tax. The taxpayer is correct about social security and medicare; however, since [Redacted] does not have a state income tax, there were no state income taxes paid on this income.

When the taxpayers became Idaho residents, any and all income that was included in federal taxable income was reportable and taxable by Idaho unless there is a specific deduction or exemption in the Idaho Code. (Idaho Code section 63-3002.) Since there is no deduction or exemption for which the taxpayers seek, the income is properly taxable on their Idaho income tax returns. Therefore, the Tax Commission upholds the Bureau's determination.

WHEREFORE, the Notice of Deficiency Determination dated August 31, 2006, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$1,619	\$ 330	\$1,949
2004	1,541	221	<u>1,762</u>
		TOTAL DUE	<u>\$3,711</u>

Interest is computed to August 1, 2007.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is enclosed.

DATED this ____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2007, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.

[Redacted]
